IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1075 of 2005
Date of Decision: 26.9.2006

Kishan Chand etc. ...Petitioners

Versus

Piare Lal etc. ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri R.K. Jain, Advocate, for the petitioners.

Shri Pankaj Jain, Advocate, for the respondents.

JUDGMENT

The challenge in the present revision petition is to the order passed by the learned trial Court on 13.12.2004, whereby an application filed by the defendants for amendment of the written statement was declined.

By virtue of amendment, the defendants want to raise a plea that the suit is barred by limitation and that the plaintiffs are estopped by their act and conduct in filing of the suit. The said amendment has been declined by the learned trial Court for the reason that such amendment is not permissible after the amendment of order 6 Rule 17 CPC with effect from 1.7.2002.

Admittedly, the suit is filed prior to the substitution of Order 6 Rule 17 CPC with effect from 1.7.2002. Thereafter, in terms of Section 16 (2)(b) of the Code of Civil Procedure (Amendment) Act, 2002, the amended provisions of the CPC are not applicable to the pleadings filed prior to the

said date. Therefore, the sole reasoning recorded by the learned trial Court is not sustainable in law.

Before this Court, learned counsel for the petitioner has submitted that the plea raised by the defendants is only legal plea and that no evidence is to be led by the defendants as a consequence of the amendment sought.

In view of the above, I am of the opinion that the plea sought to be raised by the defendant being a plea of law, should have been allowed by the learned trial Court.

Consequently, the order passed by the learned trial Court on 13.12.2004 is set aside. The defendants are permitted to amend the written statement as sought for. However, it is made clear that the petitioners shall not be entitled to lead any evidence as a consequence of the amendment of the written statement.

Parties through their counsel are directed to appear before the learned trial Court on 28.11.2006, the date already fixed before the trial Court.

26-09-2006 (HEMANT GUPTA)
ds JUDGE